

## REMARKS

I. Status of the Application

Claims 1-20 are pending in this application. In the February 3, 2005 office action, the Examiner:

1. Rejected claim 1, 3-5, 10, 11, 13, 15, 17 and 19-20 under 35 U.S.C. § 103(a) as allegedly being anticipated by U.S. Patent No. 6,047,274 to Johnson et al. (hereinafter “Johnson”); and
2. Rejected claims 2, 7-9, 12, 16 and 19 under 35 U.S.C. § 112, second paragraph as allegedly being indefinite;
3. Rejected claims 2, 6-9, 12, 14, 16, 18 and 19 under 35 U.S.C. § 103(a) as allegedly being obvious over Johnson in view of U.S. Patent No. 6,021,402 to Takriti (hereinafter “Takriti”).

In this response, applicant has amended claims 2, 12 and 19, and respectfully traverses the rejections of claims 1-20 in view of the foregoing amendments and the following remarks.

II. The Indefiniteness Rejection Should Be Withdrawn

In the February 3, 2005 office action, the Examiner rejected claim 2 as allegedly being indefinite. In particular, the Examiner alleged that the phrase “none and each one of the contingency conditions” of claims 2 and 12 was contradictory. Applicant respectfully traverses. The claim language clearly states that a function can operate in a secure mode in situations in which no contingency condition exists, and in situations in which any of the contingency conditions exists. The statements “none” and “each one” are contradictory only

because they serve to describe a list or group of different conditions in which the secure mode may be entered. A group is necessarily made up of different objects. Consider the following analogous sentence – “We go out for ice cream when we win and when we lose”. Winning and losing are contradictory, but do not render the sentence indefinite. It is respectfully submitted that the claim language is not indefinite.

Nevertheless, claims 2 and 12 have been amended to attempt to clarify the meaning.

Accordingly, it is respectfully submitted that the indefiniteness rejection of claims 2 and 12 be withdrawn. Claims 7-9 and 16 stand rejected as indefinite because they depend from one of claims 2 and 12. Because claims 2 and 12 are not indefinite, it is respectfully submitted that the indefiniteness rejection of claims 7-9 and 16 should also be withdrawn.

Claim 19 has also been amended to address what amounts to be a minor, inadvertent error. Accordingly, it is respectfully submitted that the indefiniteness rejection of claim 19 is moot and should be withdrawn.

### III. Claim 1 is Patentable

In the February 3, 2005 office action, the Examiner rejected claim 1 as allegedly being obvious over Johnson. The Examiner has admitted that Johnson fails to disclose each and every element of claim 1. Moreover, as will be discussed below in further detail, there is no legally sufficient motivation or suggestion to modify Johnson as proposed by the Examiner.

#### A. The Invention of Claim 1

Claim 1 is directed to a energy market system that includes a market user interface and an energy scheduling subsystem. The market user interface exchanges

market information with a plurality of market participants. The energy scheduling subsystem that schedules the generation and delivery of energy among market participants in accordance with the market information *and* in accordance with information relating to the energy generation and delivery system.

Thus, among other things, the system includes an energy scheduling subsystem that schedules energy generation and energy delivery in accordance with *two* factors. The first factor is the market information, for example, bids and offers. The second factor is information relating to the energy generation and delivery system, for example, constraints introduced by the physical characteristics of the energy generation and delivery system.

B. Johnson

Johnson discloses an auction system for energy suppliers. A bidding moderator receives bids from competing energy suppliers. Each supplier receives competing bids and has the opportunity to adjust its own bid down or up, depending on whether it wants to encourage or discourage additional energy delivery commitments in a particular geographic area or to a particular customer group. (See e.g. Johnson at Abstract). A winner bidder is then responsible for scheduling the energy delivery.

C. No Motivation to Modify Johnson as Proposed

Johnson fails to disclose, among other things, an energy scheduling subsystem that schedules generation and delivery of energy based on *both* the market information

*and* information relating the energy generation and delivery system. The Examiner admits this shortcoming of Johnson at p.3 of the February 3, 2005 office action. Instead, Johnson teaches a centralized Moderator device that selects winning bidders based on market information, and that the winning bidders (Providers) are responsible for scheduling the delivery of energy. (*Id.*)

However, the Examiner alleges that “it would have been obvious . . . to modify Johnson to include that said energy delivery scheduling system is an energy scheduling subsystem of said energy supply bidding system. . . .” (*Id.*) The Examiner states that the motivation for such a modification is that “it would advantageously allow to integrate said functionalities (bidding for energy supply; selecting the winning bidder; and scheduling the delivery of energy) on one computer platform, thereby allowing to simplify upgrading and maintenance of the system, and save on maintenance cost”. Applicant respectfully disagrees.

There is no teaching in the prior art that 1) integrating bidding, selecting, and scheduling the delivery of energy on a single computer platform saves maintenance costs, 2) that such integration in the Johnson system, in particular, would save maintenance costs, and 3) if there were savings, that such savings outweighed any negatives such integration. Thus, the above-quoted “motivation” for modifying Johnson is not a legally sufficient motivation or suggestion to modify Johnson as proposed.

Regarding the integration of the three functions (bidding, selecting and scheduling) onto a single computer platform, the prior art contains no teaching, implicit or express, that the integration of three functions of bidding for energy supply,

selecting a winning bidder, and scheduling would result in simplifying upgrading and maintenance. In fact, the Examiner's allegation appears to be speculation, as it is equally possible that such integration of functions would actually *increase* costs of maintenance.

As an initial matter, the software on the platform having those three functions integrated would be larger than the software on separate platforms that divide up the functions. Upgrading, troubleshooting, and repairing a problem in a larger software package is generally more complex than doing the same in separate, smaller software elements. Moreover, the integrated functions proposed by the Examiner would require more load on computing resources, because the computing load is not distributed over multiple machines. Thus, integration of the three functions, as proposed by the Examiner, may well not decrease maintenance costs.

Moreover, it is even less clear whether integration of the three functions in the Johnson system in particular would save maintenance costs. The prior art contains no teaching, implicit or otherwise, that the particular bidding, selecting and scheduling operations as taught in Johnson would benefit from integration into a single scheduling subsystem. Johnson very clearly discusses using different computers for bid selection (Moderators) and scheduling (Providers). Even if consolidation of computer functions as a general rule provides some advantages in some circumstances, the prior art does not teach that such consolidation provides any advantages in a system as complex and dynamic as that described in Johnson.

Finally, there is no teaching in the prior art regarding the relative costs of integration of the functions as proposed by the Examiner. Indeed, the prior art

provides no teaching regarding either the costs or benefits of such integration.

Accordingly, the prior art contains no teaching or suggestion as to whether there is *any net advantage* to integration of the functions into a single computer platform as proposed by the Examiner. To the contrary, in the case of Johnson, the ability of Providers to be able to schedule energy delivery on their own has advantages. There is no teaching as to whether losing these advantages is worth any savings in maintenance costs, assuming there were any such savings.

Thus, for multiple reasons, there is no legally sufficient motivation or suggestion to modify Johnson as proposed by the Examiner. As a consequence, it is respectfully submitted that the rejection of claim 1 is in error and should be withdrawn.

#### IV. Claim 2

Claim 2 stands rejected as allegedly being obvious over Johnson in view of Takriti. Claim 2 depends from and incorporates all of the limitations of claim 1. As discussed above, there is no motivation or suggestion to modify Johnson as proposed by the Examiner. Accordingly, as an initial matter, claim 2 is allowable for at least the reasons discussed above in connection with claim 1.

In addition, claim 2 is allowable because there is no motivation or suggestion to combine Johnson and Takriti as proposed by the Examiner in the rejection of claim 2. In particular, the Examiner provided the following reasoning for combining Takriti with Johnson (as modified per claim 1):

It would have been obvious . . . to modify Johnson to include . . . a unit commitment

function . . . as disclosed in Takriti, because it would advantageously allow to determine an operating schedule for generating units so that meets the load at a minimum cost, as specifically stated in Takriti (C. 3, L. 17-18).

(February 3, 2005 office action at p. 7). Applicants respectfully disagree. Takriti does not teach that a unit commitment function would determine an operating schedule for generating units that meets a load at a minimum cost *within a market system such as that taught by Johnson*. Takriti certainly does not teach the desirability of a unit commitment function in a system such as Johnson's.

In particular, the excerpt of Takriti cited by the Examiner states “. . . system at each hour. To minimize the cost of operating the system, a utility attempts to find a schedule that meets the load at a minimum cost.” (Takriti at col. 3, lines 17-19). That statement does not suggest that Johnson needs to be modified to include a unit commitment function because that statement discusses neither a “unit commitment function” nor a system such as that described in Johnson.

In addition, even if the motivation were stated in Takriti to include a unit commitment function to minimize utility costs, the motivation is misplaced because Johnson is directed to a deregulated market. In the deregulated market, multiple market participants act in their best interest and competitively, and it is bidding for supply energy that helps minimize costs to the “utility”. There is no need for a centralized “unit commitment function” to minimize costs because the market takes care of minimizing costs.

Thus, the “motivation” to “meet the load at minimum cost” is accomplished by making the suppliers bid in Johnson. Johnson does not require a unit commitment function to meet the load at a minimum cost, since it can rely specifically on the

minimum bids.

Accordingly, for reasons independent of those discussed above in connection with claim 1, it is respectfully submitted that the obviousness rejection of claim 2 is in error and should be withdrawn.

V. Claims 3-5

Claims 3-5 also stand rejected as allegedly being obvious over Johnson. Claims 3-5 depend from and incorporate all of the limitations of claim 1. Accordingly, for at least the same reasons as those set forth above in connection with claim 1, it is respectfully submitted that the rejection of claims 3-5 should be withdrawn.

VI. Claim 6

Claim 6 stands rejected as allegedly being obvious over Johnson in view of Takriti. Claim 6 depends from and incorporates all of the limitations of claim 1. As discussed above, there is no motivation or suggestion to modify Johnson as proposed by the Examiner. Because the rejection of claim 1 is a necessary prerequisite to the rejection of claim 6, claim 6 is allowable for at least the reasons discussed above in connection with claim 1.

VII. Claims 7-9

Claims 7-9 also stand rejected as allegedly being obvious over Johnson and Takriti. Claims 7-9 all depend from and incorporate all of the limitations of claim 2. Accordingly, for at least the same reasons as those set forth above in connection with claim 2, it is respectfully

submitted that the rejection of claims 7-9 should be withdrawn.

#### **VIII. Claims 10 and 17 are Patentable**

In the February 3, 2005 office action, the Examiner rejected claims 10 and 17 as allegedly being obvious over Johnson. The Examiner admitted that Johnson does not anticipate claims 10 or 17. (*Id.* at pp. 4-5) The Examiner instead relies on a modification of Johnson to rejected claims 10 and 17. As motivation for such modification , the Examiner alleges the same motivation as that discussed above in connection with claim 1. (*Id.*) For the same reasons as those discussed above in connection with claim 1, the Examiner has not set forth a legally sufficient motivation or suggestion to modify Johnson as proposed in the rejections of claims 10 and 17.

As a consequence, for reasons similar to those discussed above in connection with claim 1, it is respectfully submitted that the obviousness rejections of claims 10 and 17 are in error and should be withdrawn.

#### **IX. Claims 11, 13, 15 and 20**

Claims 11, 13, 15 and 20 also stand rejected as allegedly being obvious over Johnson. Claims 11, 13, 15 and 20 all depend from and incorporate all of the limitations of either claim 10 or claim 17. Accordingly, for at least the same reasons as those set forth above in connection with claims 10 and 17, it is respectfully submitted that the rejection of claims 11, 13, 15 and 20 should be withdrawn.

X. Claim 12

Claim 12 stands rejected as allegedly being obvious over Johnson and Takriti.

Claim 12 depends from and incorporates all of the limitations of claim 10. As discussed above in connection with claim 10, there is no motivation or suggestion to modify Johnson as proposed by the Examiner. Accordingly, as an initial matter, claim 12 is allowable for at least the reasons discussed above in connection with claim 10.

In addition, claim 12 is allowable because there is no motivation or suggestion to combine Johnson and Takriti as proposed by the Examiner in the rejection of claim 12. In particular, the Examiner provided the same reasoning for combining Takriti with Johnson as that discussed above in connection with claim 2. (February 3, 2005 office action at pp.7, 9). As discussed above in connection with claim 2, the Examiner has not set forth a legally sufficient motivation or suggestion to combine Johnson and Takriti.

As a consequence, for reasons independent of those discussed above in connection with claim 10, it is respectfully submitted that the anticipation rejection of claim 12 is in error and should be withdrawn.

XI. Claim 16

Claims 16 stands rejected as allegedly being obvious over Johnson and Takriti. Claim 16 depends from and incorporates all of the limitations of claim 12. Accordingly, for at least the same reasons as those set forth above in connection with claim 12, it is respectfully submitted that the rejection of claim 16 should be withdrawn.

XII. Claims 14, 18 and 19

Claims 14, 18 and 19 stand rejected as allegedly being obvious over Johnson in view of Takriti. Claims 14, 18 and 19 depend from and incorporate all of the limitations of either claim 10 or 17. As discussed above, there is no motivation or suggestion to modify Johnson as proposed by the Examiner to arrive at the inventions of claims 10 and 17. Because the rejection of claims 10 or 17 is a necessary prerequisite to the rejection of claim 14, 18 and 19, it is respectfully submitted that claims 14, 18 and 19 are allowable for at least the reasons discussed above in connection with claims 10 and 17.

XIII. Conclusion

For all of the foregoing reasons, it is respectfully submitted the applicant has made a patentable contribution to the art. Favorable reconsideration and allowance of this application is, therefore, respectfully requested.

Respectfully submitted,



Harold C. Moore  
Attorney for Applicant  
Attorney Registration No. 37,892  
Maginot Moore & Bowman  
Bank One Center Tower  
111 Monument Circle, Suite 3000  
Indianapolis, Indiana 46204-5115  
Telephone: (317) 638-2922